STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0755

State of Minnesota,
Respondent,

vs.

Dennis Michael St. John, Jr.,
Appellant.

Filed May 1, 2023
Affirmed
Smith, Tracy M., Judge

Carlton County District Court
File No. 09-CR-20-1141

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Lauri A. Ketola, Carlton County Attorney, Carlton, Minnesota (for respondent)

Kevin M. Gregorius, Meshbesher & Associates, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal, appellant Dennis Michael St. John, Jr., challenges his convictions for three counts of first-degree criminal sexual conduct, one count of kidnapping, and one count of domestic assault. He asserts that the district court erred by

(1) denying his motion to suppress cell site location information collected pursuant to a search warrant, (2) granting the prosecution's motion under Minnesota Rule of Criminal Procedure 9.02 to collect a saliva sample, (3) admitting expert testimony about the dynamics of domestic abuse, (4) admitting recordings of the 911 calls reporting the incident, (5) admitting evidence of a prior sexual assault by appellant, (6) excluding evidence about the alleged victim's prior sexual conduct, and (7) admitting evidence of appellant's prior controlled-substance conviction for impeachment. We affirm.

FACTS

Respondent State of Minnesota charged St. John with six criminal counts arising out of his alleged physical and sexual assaults of K.-K. while holding her against her will at his home from Friday, July 17 until Sunday, July 19, 2020. Those counts included first-degree criminal sexual conduct, kidnapping, and domestic assault. The following facts are derived from St. John's jury trial.

Incident

K.-K. testified that, on Friday, July 17, she met up with St. John at a casino. The two had an ongoing sexual relationship, although K.-K. had tried before to end that relationship. After a while at the casino, K.-K. and St. John left and drove separately to St. John's house. At his house, K.-K. left her keys and her phone in her car. The two smoked marijuana and had consensual, vaginal sex. Afterward, C.D., a friend of St. John's, and A.D., an acquaintance, came over for a short visit and then left.

K.-K. tried to leave with C.D. and A.D., but St. John shut the door and began hitting her, saying "paybacks are a bitch." He then dragged K.-K. to the living room, cut off her shirt and bra with a knife, and took off her underwear and put them in his pocket.

For the next 36 hours, St. John kept K.-K. trapped in his house, remaining close to her and keeping her in eyesight when she went to the bathroom. During this time, St. John sexually assaulted K.-K. at least six times, inserting his penis into her vagina and anus and making her give him oral sex. He beat her with his fists, elbows, and knees. He also headbutted her. St. John threatened to kill K.-K. and her family and showed her pictures of her children on his cellphone. He also came at her with a knife. He forced her to smoke methamphetamine to stay awake.

During this time, on Saturday night, one of St. John's friends, A.G., came over with food and water. K.-K. tried to get A.G. to help her by mouthing silently to call 911, but A.G. left without responding.

K.-K. escaped on Sunday morning. She noticed that St. John had left the side door open a crack when he let the dog out. K.-K. ran through the open door to her car and drove to Proctor, where two of her children lived with their grandparents. K.-K. was screaming and crying while she was driving because she was afraid that St. John would kill her children.

Upon arriving at the grandparents' residence, K.-K. was still screaming. She told the grandparents that she had been assaulted, and they called 911. K.-K. told the 911 operator what had happened to her. A couple of minutes later, a police officer called K.-K. back, and K.-K., pursuant to the officer's instructions, went to the hospital where she had

a sexual-assault-nurse-examiner (SANE) examination. The SANE examination revealed that K.-K. had extensive bruising on her body and one laceration and one abrasion on her external genitalia.

The state also presented testimony from Scott Miller, an expert in the field of the dynamics of domestic violence; recordings of phone calls in which K.-K. reported the incident; testimony from St. John's former girlfriend, R.G., about his sexual assault of her; and evidence related to St. John's and K.-K.'s cellphone locations and calls.

St. John testified in his defense. He denied having nonconsensual sex with K.-K. and holding her against her will. According to St. John, he and K.-K. did methamphetamine, smoked marijuana, and had rough consensual sex throughout the weekend. On Saturday, after A.G. came over, St. John left K.-K. at his home and purchased methamphetamine from his cousin, D.R. Then, around midnight or 1 a.m. on Sunday, St. John and K.-K. got into an argument because K.-K. had taken his mother's jewelry. He said that they "got into a domestic" and that he slapped and hit her between six and ten times. St. John testified that K.-K. hit him as well. After the fight, they fell asleep. The next morning, he heard a door opening and K.-K.'s car leaving.

Three other witnesses testified for the defense. St. John's cousin D.R. testified that he sold St. John methamphetamine on Saturday and that K.-K. made up the charges so that she could get into battered women's housing. St. John and K.-K.'s friend S.B. testified that she introduced K.-K. to St. John because K.-K. was interested in "rough sex." Finally, a Cloquet detective testified that D.R. had provided her consistent information about D.R.'s

selling St. John methamphetamine on Saturday and about K.-K.'s desire for battered women's housing.

Verdict and Sentencing

The jury found St. John guilty of first-degree criminal sexual conduct (great bodily harm) under Minnesota Statutes section 609.342, subdivision 1(c) (Supp. 2019); first-degree criminal sexual conduct (dangerous weapon) under Minnesota Statutes section 609.342, subdivision 1(d) (Supp. 2019); first-degree criminal sexual conduct (force or coercion) under Minnesota Statutes section 609.342, subdivision 1(c)-(d), (e)(i) (Supp. 2019); kidnapping to commit great bodily harm under Minnesota Statutes section 609.25, subdivision 1(3) (2018); and domestic assault under Minnesota Statutes section 609.2242, subdivision 1 (2018). The jury acquitted St. John of one count of kidnapping to facilitate commission of a felony under Minnesota Statutes section 609.25, subdivision 1(2) (2018). The jury also found three "heinous elements" related to the criminal sexual conduct, *see* Minn. Stat. § 609.3455, subd. 1(d) (2022), and that, in relation to the kidnapping, K.-K. had not been released in a "safe place," *see* Minn. Stat. § 609.25, subd. 2(2) (2018).

The district court sentenced St. John to concurrent terms of 98 months in prison for the count of kidnapping and not leaving the victim in a safe place, *see* Minn. Stat. § 609.25, subd. 2(2), and life without the possibility of release for the count of first-degree criminal sexual conduct (bodily harm), based on the three heinous elements found by the jury, *see* Minn. Stat. § 609.3455, subd. 2(a)(1) (2022) (requiring mandatory life sentence without release if the fact finder determines that two or more heinous elements exist).

St. John appeals.

DECISION

St. John argues that the seven errors he asserts on appeal deprived him of a fair trial and entitle him to a new trial. We address each of his arguments in turn.

I. The district court did not err by admitting cell site location information.

St. John contends that the district court erred by denying suppression of cell site location information relating to St. John's phone, which was acquired pursuant to a search warrant. He argues that the warrant was not supported by probable cause. We disagree.

"A [search] warrant is supported by probable cause if, on the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Holland*, 865 N.W.2d 666, 673 (Minn. 2015) (quotation omitted). Appellate courts must "determine whether there was a substantial basis to conclude that probable cause existed," and that "inquiry is limited to the information presented in the affidavit supporting the warrant." *Id.* (quotation omitted). "When reviewing a pretrial order on a motion to suppress, [appellate courts] review the district court's determination of probable cause de novo." *Id.*

The affidavit in support of the warrant application stated that K.-K. "had been raped, threatened with a knife, threatened with a flashlight bat, and held against her will by . . . St. John . . . at his residence." The affidavit also stated that "the incident began at . . . St John's house on Friday, July 17, 2020 and ended after [K.-K] was able to leave through an unlocked door at St John's residence approximately thirty minutes before she called dispatch (July 19, 2020)." The warrant stated that cellphone numbers for which the location information was sought were linked to St. John and K.-K., and that "the cell site

and location information would assist in establishing a timeline and corroborating information obtained during the investigation." We conclude that, under the totality of the circumstances, there was a fair probability that evidence of K.-K.'s kidnapping—specifically, evidence that would confirm that St. John and K.-K. were at St. John's house for the asserted duration—would be found in St. John's cell site location information.

We are unpersuaded by St. John's argument that *Holland* and *State v. Harvey*, 932 N.W.2d 792 (Minn. 2019), require more information to establish probable cause. First, in *Holland*, the supreme court affirmed that probable cause existed to search the contents of Holland's cellphone and iPad when Holland's wife died of an injury and Holland admitted to police that he had researched whether such an injury could be caused by falling down the stairs. 865 N.W.2d at 675. But *Holland* does not demand such specific facts to establish a connection between a cellphone and a crime in order to search only cell site location information.

Second, in *Harvey*, the supreme court affirmed that probable cause existed to search cell site location information for Harvey's cellphone around the time of a shooting. Contrary to St. John's argument, *Harvey* supports rather than undermines the determination that the warrant application and affidavit here provided probable cause. In *Harvey*, even though neither the victim, A.A., nor the cellphone company stated that the cellphone number belonged to the defendant, the supreme court affirmed the determination of probable cause because "[n]umerous allegations in [the] affidavit and reasonable inferences to be drawn from those allegations sufficiently link [the defendant] to the shooting of A.A. and the murder of [another victim]." 932 N.W.2d at 803-04. Here,

St. John does not dispute that the warrant application identified his cellphone number, and the allegations in the affidavit similarly link St. John to the kidnapping of K.-K.

In sum, the search warrant was supported by probable cause and the district court therefore did not err by denying St. John's motion to suppress the cell site location information.

II. The district court did not err by granting the state's motion for a saliva sample and admitting that evidence at trial.

St. John contends that the district court erred by granting the state's motion to collect his saliva for a DNA sample under Minnesota Rule of Criminal Procedure 9.02, subdivision 2(1)(f). The district court had previously granted St. John's motion to suppress a prior DNA sample collected under a July 20, 2020 search warrant because that warrant lacked probable cause. St. John asserts that the taint from the invalid warrant remained and thus the district court should not have granted the state's motion for a saliva sample or admitted the resulting DNA evidence at trial. We are not persuaded.

Subdivision 2 of rule 9.02 is a discovery tool in which, on the prosecutor's motion, the district court "may, subject to constitutional limitations, order a defendant to . . . [p]ermit the taking of blood, hair, saliva, urine, or samples of other bodily materials that do not involve unreasonable intrusion." Minn. R. Crim. P. 9.02, subd. 2(1)(f). In its order granting the state's motion to collect St. John's saliva, the district court addressed and rejected St. John's argument that the prior invalid search warrant barred the state from collecting a new DNA sample. The district court explained that the warrant lacked probable cause because of its "conclusory and vague language." Specifically, the warrant failed to

state that a SANE examination had been conducted or that other samples for comparison had been collected. In its rule 9.02 motion, the state remedied that lack of probable cause by providing "a detailed explanation of [K.-K.'s] statement in relation to the items seized from [St. John's] home and the SANE examination." We discern no error in the district court's grant of the state's rule 9.02 motion under these circumstances.

St. John has provided no caselaw suggesting that suppression of a prior DNA sample bars the state from ever collecting another DNA sample from the same individual. And we are not persuaded by St. John's argument that the second DNA sample was "tainted" by the first invalid search warrant because the state had already analyzed the first sample. Generally, evidence that "would not have come to light" but for police exploitation of their illegal actions is excluded as "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). But when a later search is purged of the underlying illegal police conduct, the evidence may be admitted. *See State v. Sickels*, 275 N.W.2d 809, 814 (Minn. 1979). Here, law enforcement collected the first DNA sample under a warrant later determined to lack probable cause. The second DNA sample was obtained in accordance with rule 9.02, and the state's motion remedied the deficiencies in the first warrant. We are unconvinced that the state sought a second DNA sample only because it knew that the first DNA sample matched the sample from K.-K.'s SANE examination.

The district court did not err by granting the state's rule 9.02 motion to collect St. John's DNA or by admitting the resulting DNA evidence at trial.

III. The district court did not abuse its discretion by admitting expert testimony.

St. John contends that the district court erred by granting the state's motion to admit expert testimony about the dynamics of domestic abuse, specifically about perpetrators and victims of battering. "Rulings concerning the admission of expert testimony generally rest within the sound discretion of the district court and will not be reversed absent a clear abuse of discretion." *State v. Mosley*, 853 N.W.2d 789, 798-99 (Minn. 2014). When considering whether to admit expert testimony, a district court must determine whether the testimony is relevant, whether it is helpful to the trier of fact, and whether its prejudicial effect substantially outweighs its probative value. *State v. Grecinger*, 569 N.W.2d 189, 193 (Minn. 1997). St. John argues that the district court abused its discretion because the testimony was neither relevant nor helpful.

First, St. John contends that the testimony was not relevant. In reviewing the admissibility of testimony about "battered woman syndrome," appellate courts consider whether "the proffered evidence demonstrated that the proponent had the type of relationship about which the expert will testify." *State v. Hanks*, 817 N.W.2d 663, 668 (Minn. 2012). St. John argues that "the evidence in this case was insufficient to establish that" St. John and K.-K. were "in an abusive or battering relationship." We disagree.

K.-K. provided extensive testimony at trial about her relationship with St. John. According to her testimony, whenever K.-K. expressed that they were not in a relationship, St. John "would demand that [they] were and get mad." At one point, K.-K. had tried to end the relationship. She also testified that St. John would get mad when she wanted to leave his house, that he would go through her phone, that he threatened to harm her, that

he called her names when she "set him off," and that she was afraid of him. And St. John himself testified that he "got into a domestic" with K.-K. during the weekend and slapped and hit her multiple times.

We are also unpersuaded by St. John's argument that *Hanks* compels a different conclusion. In *Hanks*, the supreme court considered whether the district court abused its discretion by excluding a defendant from presenting expert testimony about battered woman syndrome when she was prosecuted for the murder of her romantic partner. 817 N.W.2d at 668-89. The supreme court concluded that the district court "did not abuse its discretion in finding that the evidence of a troubled relationship between [the defendant] and [the victim] was insufficient to establish the type of relationship that would give rise to battered woman syndrome." *Id.* at 669. But, unlike the circumstances here, the supreme court specifically noted in *Hanks* that the defendant did not claim that she was physically abused or that she was afraid of her partner. Thus, *Hanks* is distinguishable. Furthermore, that a district court may exclude expert testimony in one case does not mean that a district court abuses its discretion by admitting expert testimony in another case, even when the cases have some similar factual circumstances.

Second, St. John contends that the expert testimony here was not helpful to the jury because "society writ large has come to broadly understand and acknowledge the behavior of individuals, regardless of gender, in abusive relationships" and K.-K. did not exhibit any "counterintuitive behavior" for which "such testimony may have been of value." We disagree.

The supreme court has repeatedly recognized that testimony about battered woman syndrome is admissible

> (1) to dispel the common misconception that a normal or reasonable person would not remain in such an abusive relationship, (2) for the specific purpose of bolstering the defendant's position and lending credibility to her version of the facts, and (3) to show the reasonableness of the defendant's fear that she was in imminent peril of death or serious bodily injury.

Id. at 667; *see also State v. Obeta*, 796 N.W.2d 282, 291-92 (Minn. 2011) (explaining that the supreme court's "more recent case law has recognized that such expert opinion testimony on the typical behaviors of victims of similar crimes may be helpful to the jury"). We reject St. John's contention that the prevalence of pop songs, prime-time television shows, Hollywood films, and news headlines about domestic abuse means that a lay person now understands these complex dynamics.

We are also unconvinced by St. John's argument that K.-K. did not exhibit counterintuitive behavior and thus the expert testimony was not helpful to evaluate her credibility. As St. John acknowledges, the state's case relied heavily on K.-K.'s credibility. On cross-examination of K.-K., St. John attacked her credibility based on her willingness to meet with St. John and have consensual sex with him despite her prior testimony that she had tried to end the relationship. St. John also attacked her credibility on the basis of the opportunities she had to leave the house and her failure to get the attention of A.G. K.-K. explained that she felt like she could not leave because she thought that she would be killed. Consistent with the reasons identified by the supreme court, the expert testimony on the dynamics of domestic abuse could have been helpful to the jury to "dispel the

common misconception that a normal or reasonable person would not remain in such an abusive relationship" and "to show the reasonableness of the defendant's fear that she was in imminent peril of death or serious bodily injury." *Hanks*, 817 N.W.2d at 667.

In sum, the district court did not abuse its discretion by admitting the expert testimony.

IV. The district court did not abuse its discretion by admitting the 911 calls.

St. John argues that the district court abused its discretion by admitting recordings of two phone calls, which were both admitted over St. John's objection following the state's pretrial motion. He argues that the calls—K.-K.'s initial 911 call and a callback from an officer a couple of minutes later—do not qualify for the excited-utterance exception to the hearsay rule.[1] We disagree.

Hearsay is an out-of-court statement offered "to prove the truth of the matter asserted" and is generally inadmissible. Minn. R. Evid. 801(c), 802. However, a prior out-of-court statement is admissible as an exception to the hearsay rule if the statement qualifies as an "[e]xcited utterance." Minn. R. Evid. 803(2). Such a statement must meet three requirements: (1) "there must be a startling event or condition," (2) "the statement must relate to the startling event or condition," and (3) "the declarant must be under a sufficient aura of excitement caused by the event or condition to [e]nsure the trustworthiness of the statement." *State v. Daniels*, 380 N.W.2d 777, 782 (Minn. 1986)

[1] St. John also argues that admission of the calls violated the Confrontation Clause. But for a successful Confrontation Clause claim, the defendant must have been unable to cross-examine the declarant. *State v. Sutter*, 959 N.W.2d 760, 765 (Minn. 2021). K.-K. testified at trial and was subject to cross-examination, and thus St. John's argument is without merit.

(quoting Minn. R. Evid. 803(2) cmt.). To determine whether a declarant was under a sufficient aura of excitement, the district court "must consider all relevant factors including the length of time elapsed, the nature of the event, the physical condition of the declarant, [and] any possible motive to falsify." *Id.*

St. John contends that K.-K. did not remain under "a sufficient aura of excitement" because she called 911 about 30 minutes after leaving St. John's house. We are unpersuaded. The "[l]apse of time between the startling event and the excited utterance is not always determinative." *Daniels*, 380 N.W.2d at 783; *see, e.g.*, *State v. Berrisford*, 361 N.W.2d 846 (Minn. 1985) (affirming that a statement made 90 minutes after a murder was admissible). Here, the district court acknowledged that K.-K.'s statements occurred 30 minutes after leaving St. John's house but still determined that K.-K. "remained under the stress of the excitement." The district court also found that K.-K. "did not have time to fabricate the events she reported." Moreover, St. John concedes that the district court found "based on [K.-K.'s] tone, rate of speech, crying, and statements, that she was upset and fearful from the events." We discern no error in the district court's finding that K.-K. remained under a sufficient aura of excitement.

In sum, the district court did not abuse its discretion by admitting the calls.

V. The district court did not abuse its discretion by admitting evidence of St. John's assault of his former girlfriend.

St. John contends that the district court abused its discretion by admitting evidence that he physically and sexually assaulted his former girlfriend, R.G. We disagree.

At trial, R.G. testified that she had dated St. John in 2018. Although he was initially nice to her, he became abusive and controlling. On August 26, 2018, while R.G. and St. John were at a neighbor's house, St. John became angry with R.G. because he thought she was cheating on him. He began hitting her, spitting beer at her, and calling her derogatory names. He also inserted his fingers into her vagina. Then, St. John brought her into his van, ripped her pants and shirt off, cut her bra off, and tied her hands. When St. John left to get his charger after his cellphone died, R.G. found some clothes and escaped.

"Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith," but it may be admissible "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b). Evidence of other acts or crimes submitted for a permissible purpose is commonly called *Spreigl* evidence. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)). A five-step procedure applies to the admissibility of *Spreigl* evidence:

> (1) the state must give notice of its intent to admit the evidence;
> (2) the state must clearly indicate what the evidence will be offered to prove;
> (3) there must be clear and convincing evidence that the defendant participated in the prior act;
> (4) the evidence must be relevant and material to the state's case; and
> (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Tomlinson, 938 N.W.2d 279, 286 (Minn. App. 2019), *rev. denied* (Minn. Feb. 26, 2020); *see also* Minn. R. Evid. 404(b)(2). St. John argues that the district court erred with respect to steps three, four, and five, contending that (1) the evidence was not clear and

convincing that St. John committed the alleged acts, (2) the evidence was not relevant or material, and (3) the prejudicial effect of the evidence outweighed any probative value. We evaluate each argument in turn.

Clear and Convincing Evidence

St. John asserts that there was not "clear and convincing evidence" that he physically and sexually assaulted R.G. because the proffered evidence was "a mere complaint" and the district court cannot "presume credibility of complaining witnesses." But, contrary to St. John's argument, the district court also considered R.G.'s statement to police on the day of the assault and concluded that it was credible because "it was given voluntarily and without probing from law enforcement" and R.G. "clearly identifies and establishes [St. John's] involvement in the alleged conduct."

First, we defer to the district court's credibility determination. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, *Minnesota v. Dickerson*, 508 U.S. 366, (1993). And the district court's conclusion, based on that credibility determination, that the evidence of the assault on R.G. was clear and convincing is consistent with Minnesota caselaw governing *Spreigl* evidence. *See State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006) (holding that the district court did not abuse its discretion when it "determined that [*Spreigl* victim's] testimony was credible" and thus that defendant's participation in the incidents was "clear and convincing"); *Kennedy*, 585 N.W.2d at 390 ("In fact, [the Minnesota Supreme Court] has on numerous occasions admitted *Spreigl* evidence supported only by the testimony of the victim in the *Spreigl* offense."). Thus, the

district court properly exercised its discretion when it determined that there was clear and convincing evidence of St. John's physical and sexual assault of R.G.

Relevance and Materiality

St. John asserts that the evidence was not relevant or material to the state's case. In cases involving criminal sexual conduct, evidence may be admissible under the common-scheme-or-plan exception "to establish that the conduct on which the charged offense was based actually occurred or to refute the defendant's contention that the victim's testimony was a fabrication or a mistake in perception." *Ness*, 707 N.W.2d at 688 (citing *State v. Wermerskirchen*, 497 N.W.2d 235, 241-42 (Minn. 1993)). *Spreigl* evidence admitted to show a common plan or scheme must have a "marked similarity in modus operandi" to the charged offense. *Id.* "[T]he closer the relationship between the other acts and the charged offense, in terms of time, place, or modus operandi, the greater the relevance and probative value of the other-acts evidence and the lesser the likelihood that the evidence will be used for an improper purpose." *Id.*

St. John contends that the district court did not properly analyze the incidents under *Ness*. We disagree. Contrary to St. John's assertion, the district court expressly analyzed whether the *Spreigl* incident was "markedly similar" to the charged conduct, as required by *Ness*. St. John does not dispute that the *Spreigl* incident was close in time to the charged conduct and occurred within a mile and a half of the charged conduct. And, contrary to St. John's characterization, the *Spreigl* incident and the charged conduct shared multiple similarities: both involved a woman in an abusive sexual relationship with St. John; St. John forcibly removed both women's clothing and held them captive; St. John

physically and sexually assaulted the women—specifically, by vaginal penetration; St. John expressed jealousy and threatened the women; and both women were not let go by St. John but rather eventually escaped. On this record, the district court properly exercised its discretion when it found that the *Spreigl* incident was markedly similar to the charged conduct.

Probative Value Versus Unfair Prejudice

St. John argues that even if the *Spreigl* evidence was relevant, the potential unfair prejudice of R.G.'s testimony outweighed its probative value. When evaluating whether the potential for unfair prejudice outweighs the probative value of the evidence, appellate courts "balance the relevance of the [*Spreigl* evidence], the risk of the evidence being used as propensity evidence, and the State's need to strengthen weak or inadequate proof in the case." *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009). *Spreigl* evidence is prejudicial by nature, but "unfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted).

Given the marked similarities between R.G.'s testimony and the charged conduct, the *Spreigl* incident was highly relevant to whether K.-K. fabricated the charged conduct. K.-K.'s credibility was central to the state's case, and her credibility was challenged by St. John and D.R. testifying that she fabricated the incident. Although St. John argues that the state's closing argument suggested that R.G.'s testimony could be used as propensity evidence, the district court gave a limiting instruction both before admitting the *Spreigl*

evidence and during its final jury instructions, reducing the chance that the jury would use the evidence for an improper purpose or that the jury would find St. John guilty based on a propensity to commit sexual offenses rather than on the evidence as a whole. *See State v. Welle*, 870 N.W.2d 360, 366 (Minn. 2015) (explaining that reviewing courts presume that the jury followed cautionary instructions). On this record, the district court did not abuse its discretion by determining that the probative value of R.G.'s testimony was not outweighed by its prejudicial effect.

In sum, the district court did not abuse its discretion by admitting the *Spreigl* evidence.[2]

VI. The district court did not abuse its discretion by excluding certain evidence about K.-K.'s alleged sexual conduct.

St. John contends that the district court erred by excluding testimony about K.-K.'s alleged sexual conduct. The district court initially denied St. John's motion to admit any evidence about K.-K.'s prior sexual conduct with St. John. Then, after St. John's renewed motion, the district court granted St. John's motion in part and allowed St. John to present, within certain limitations, testimony from D.R. and S.B. related to K.-K.'s and St. John's prior sexual conduct. The district court also permitted St. John to cross-examine K.-K.

[2] We note that, even if the district court had erred in its *Spreigl* analysis, St. John has not established that the district court erred by admitting this testimony. The district court also admitted the testimony as relationship evidence under Minnesota Statutes section 634.20 (2022). St. John does not challenge that ruling, and we discern no error in the district court's determination. *See State v. Valentine*, 787 N.W.2d 630, 638 (Minn. App. 2010) (holding that, in trial for domestic assault of one girlfriend, evidence about appellant's abuse of his other girlfriend was admissible as relationship evidence), *rev. denied* (Minn. Nov. 16, 2010).

about statements that K.-K. made to a defense investigator about her sexual conduct. Although the district court limited D.R.'s and S.B.'s testimony, the district court did not limit St. John's testimony about his and K.-K.'s prior sexual conduct.

The admission of evidence about a victim's prior sexual conduct is governed, and generally excluded, by Minnesota Rule of Evidence 412 and Minnesota Statutes section 609.347, subdivision 3 (2022). But when consent of the victim is a defense, as it is here, certain evidence about the victim's previous sexual conduct is admissible—specifically, "evidence of the victim's previous sexual conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue, relevant and material to the issue of consent" and "evidence of the victim's previous sexual conduct with the accused." Minn. R. Evid. 412(1)(A); *see also* Minn. Stat. § 609.347, subd. 3(a) (stating that "evidence of the victim's previous sexual conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue" and "evidence of the victim's previous sexual conduct with the accused" is admissible). In addition, to be admissible under rule 412, the evidence's probative value must not be "substantially outweighed by its inflammatory or prejudicial nature." Minn. R. Evid. 412(1).

When moving to admit such evidence, the defense must "set[] out with particularity the offer of proof of the evidence that the accused intends to offer, relative to the previous sexual conduct of the victim." Minn. R. Evid. 412(2)(A). For common-scheme-or-plan evidence, the district court "must find by a preponderance of the evidence that the facts set out in the accused's offer of proof are true." Minn. Stat. § 609.347, subd. 3. For evidence

of prior sexual conduct with the accused, the district court "must find that the evidence is sufficient to support a finding that the facts set out in the accused's offer of proof are true." *Id.*

St. John asserts that the district court erred by excluding certain testimony about K.-K.'s alleged sexual conduct. We are not persuaded. The district court considered whether that testimony was admissible as evidence of prior sexual conduct and concluded that the testimony was "irrelevant" and "extremely prejudicial." St. John does not challenge those determinations, nor does he challenge the district court's determination that his offer of proof was "not sufficient to support a finding that the facts set out in the offer of proof are true." *See* Minn. Stat. § 609.347, subd. 3. As a result, we discern no abuse of discretion by the district court's limitations on D.R.'s and S.B.'s testimony about K.-K.'s alleged prior sexual conduct with St. John.

VII. The district court did not abuse its discretion by admitting impeachment evidence of St. John's third-degree controlled-substance conviction.

St. John contends the district court abused its discretion by granting the state's motion to impeach St. John's credibility as a witness with a prior third-degree controlled-substance conviction. We disagree.

Under Minnesota Rule of Evidence 609, a felony conviction may be admitted for impeachment purposes if ten or fewer years have elapsed since the conviction and the probative value of the evidence outweighs its prejudicial effect. When determining whether a prior conviction is more probative than prejudicial under Minnesota Rule of Evidence 609(a), the district court considers five factors: (1) the impeachment value of the prior

crime; (2) the date of conviction and the defendant's subsequent history; (3) the similarity of the past crime with the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. *State v. Zornes*, 831 N.W.2d 609, 627 (Minn. 2013).

St. John contends that the district court abused its discretion because the prior controlled substance conviction provides "minimal" impeachment value for "pending charges of criminal sexual conduct"; the conviction was from January 2014, approximately eight years before trial; and "there is no similarity between the two offenses."

The argument is unconvincing. The supreme court has explained that any crime may have impeachment value. *State v. Brouillette*, 286 N.W.2d 702, 708 (Minn. 1979) ("[Rule 609] clearly sanctions the use of felonies . . . not directly related to truth or falsity for purposes of impeachment, and thus necessarily recognizes that a prior conviction, though not specifically involving veracity, is nevertheless probative of credibility."). Furthermore, greater similarity between the prior felony and the charged conduct, contrary to St. John's argument, weighs against using a prior felony for impeachment. *See State v. Hochstein*, 623 N.W.2d 617, 624-25 (Minn. App. 2001). As a result, St. John has identified no error by the district court.

Because we conclude that the district court did not err, we need not address St. John's assertion of cumulative error.

Affirmed.